

## **REMARKS**

### **1. Amendments to the Claims**

Claims 1-3, and 5 have been amended to recite “consecutive” amino acids. Support is found in the Specification on page 5, line 30 to page 6, line 7.

Claims 1-3 have been amended to recite “substantially pure.”

### **2. Interview Summary**

Applicants thank the Examiner for extending the courtesy of an Interview with their representatives. During the Interview the indefiniteness rejections were discussed.

### **3. Indefiniteness**

#### **A. Immunologically Equivalent**

The Examiner rejects claims 1-12, 14-18, 27, and 46-50 under 35 U.S.C. § 112, second paragraph, as being indefinite for “immunologically equivalent.” Applicants respectfully submit that the term is clear based on the definition in the Specification.

The Specification discloses that:

In the present context, two polypeptide fragments are immunologically equivalent if they both satisfy property i), property ii), property iii), property iv), property v), property vi), property vii), or property viii).

(Specification, page 13, lines 1-3). The plain meaning of the phrase “both tests satisfy x, y, or z,” appears to be that both tests must satisfy x, or both tests must satisfy y, or both tests must satisfy z. This is supported by the term “both” preceding a clause whereby the English language would generally distribute the “or” to each member of the clause. Furthermore, this interpretation is supported by the case law. *SuperGuide Corp. v. DirectTV Enterprises, Inc.*, 69 U.S.P.Q.2d 1865, 1876 (Fed. Cir. 2004) (where the court applied the preceding phrase “at least one of” to categories x, y, and z, to obtain: at least one x, at least one y, and at least one z).

Thus, the Specification, the plain meaning of the definition present in the Specification, and the case law support the conclusion that “immunologically equivalent” means both polypeptide fragments must satisfy the same property. Applicants request that the rejection be withdrawn.

**B. “And Oligopeptide”**

The Examiner rejects claims 1-3 under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting “and oligopeptide.” Applicants submit that this is a typographical error and have corrected it. Applicants request that the rejection be withdrawn.

**C. “Said Polypeptide”**

The Examiner rejects claims 1-3 under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting “said polypeptide.” Applicants have amended the claims to recite “said substantially pure polypeptide.” Applicants submit that this amendment obviates the Examiner’s rejection. Applicants request that the rejection be withdrawn.

**D. Esat-6 family protein comprising at least 7 amino acids**

The Examiner rejects at least claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states “[b]ecause the claimed polypeptide of 7 amino acids “comprises” an amino acid sequence encoded by one of the polypeptides listed immediately above, it is unclear how one has a 7 amino acid sequence which comprises an amino acid sequence of 81-125 amino acids.”

Applicants have amended the claim to recite that the short peptide is “at least 7 consecutive amino acids.” Applicants submit that this amendment renders the claims definite.

However, the Examiner indicates in the interview summary of April 27, 2009 that an amendment of the other polypeptides to “at least 101 consecutive amino acids” would appear to “place the claims in better position for allowance.” Applicants have amended the claims accordingly.

Thus, Applicants submit that one of skill would understand the oligopeptide to be clear based on the claim language.

### CONCLUSION

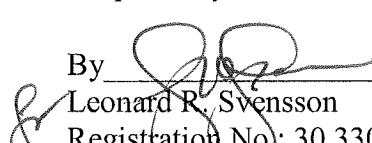
Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicants respectfully petition for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$130.00 is attached hereto.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson Reg. No. 30,330 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: June 5, 2009

Respectfully submitted,

By  #47,604  
Leonard R. Svensson  
Registration No: 30,330  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
12770 High Bluff Drive  
Suite 260  
San Diego, California 92130  
(858) 792-8855  
Attorney for Applicant